IN THE

SUPREME COURT OF THE UNITED STATES

Record No. 78-5283

JAMES A. JACKSON

Petitioner

v.

COMMONWEALTH OF VIRGINIA, and
R. ZAHRADNICK, Warden

Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO GRANTING OF CERTIORARI

MARSHALL COLEMAN
Attorney General of Virginia

LINWOOD T. WELLS, JR.
Assistant Attorney General

Supreme Court Building
Richmond, Virginia 23219

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is not reported. Petitioner claims that jurisdiction is founded upon 28 U.S.C. § 1254(1).

ISSUE PRESENTED

I. FOR PURPOSES OF FEDERAL HABEAS CORPUS REVIEW WAS THE EVIDENCE SUFFICIENT FOR CONVICTION?

ARGUMENT

I. FOR PURPOSES OF FEDERAL HABEAS CORPUS REVIEW EVIDENCE WAS SUFFICIENT FOR CONVICTION.

Petitioner was charged with and convicted of murder in the first degree. In his Petition for a Writ of Habeas Corpus filed in the United States District Court for the Eastern District of Virginia, he alleged that the evidence was insufficient for conviction. The District Court granted the Writ, holding that the record was "totally devoid of any evidence of premeditation...." The case was then appealed to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals held that there was evidence of premeditation sufficient for conviction.

While Petitioner argues that there was evidence to the effect that he was "extremely intoxicated" at the time of the killing, he does not deny that there was some evidence to show that he was capable of premeditation, an element of first degree murder.

Under Virginia law, premeditation need not exist for any particular length of time and may be formed at the moment of the commission of the act. Commonwealth v. Brown, 90 Va. 671, 19 S.E. 447 (1894); Shiflett v. Commonwealth, 143 Va. 609, 130 S.E. 777 (1925).

The victim was found nude below the waist. It would not have been unreasonable for the Trial Court to conclude that the Petitioner shot the victim because she resisted his sexual advances that he planned hours before and for which, hours before, he possessed a weapon with which to accomplish his purpose. The victim was shot two times. The evidence did not show conclusively that Petitioner was so intoxicated that he could not deliberate. It is thus abundantly clear that the record was not devoid of evidence of premeditation. The opinion of the Court of Appeals was therefore clearly correct.

Petitioner now argues that the test of whether the evidence was sufficient for conviction should rest upon whether the evidence was sufficient to show guilt beyond a reasonable doubt. His argument is based upon the opinion of Mr. Justice Stewart, dissenting from denial of certiorari in Freeman v. Zahradnick, 429 U.S. 1111 (1977). However, this Court in Thompson v. City of Louisville, 362 U.S. 199 (1960), held that a Federal Court in habeas corpus must deny the writ if in the State Court record there is "some" evidence to prove each element of the offense. To extend the rule of Thompson, supra, so that a test of reasonable doubt is applied would be to thrust upon Federal Courts complete review of nearly all State Court convictions. It is in the interest of both comity and the administration of justice that the rule not be so extended.

In Grundler v. North Carolina, 283 F.2d 798 (4th Cir. 1960), the Court stated in 283 F.2d at p. 801 as follows:

> "There is a difference between a conviction based upon evidence deemed insufficient as a matter of state criminal law and one so totally devoid of evidentiary support as to raise a due process issue. It is only in the latter situation that there has been a violation of the Fourteenth Amendment, affording the state prisoner a remedy in a federal court on a writ of habeas corpus."

Certiorari should not be granted in the instant case. There are neither special nor important reasons for granting certiorari herein, as are required by Rule 19, Rules of the Supreme Court of the United States. The decision of the Court of Appeals is in accord with cases decided long before this. The decision of the Court of Appeals is clearly correct, and to review this matter on certiorari would only result in this Court's applying settled law.

CONCLUSION

For the foregoing reasons the Respondents respectfully submit that this Honorable Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

MARSHALL COLEMAN
Attorney General of Virginia

LINWOOD T. WELLS, JR.
Assistant Attorney General

Supreme Court Building
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

This is to certify that I, Linwood T. Wells, Jr., Assistant Attorney General of Virginia, am a member of the bar of the Supreme Court of the United States, and on November 14th, 1978, I mailed a true copy of this Respondents' Brief in Opposition to Granting of Certiorari to Carolyn J. Colville, Esquire, Colville & Dunham, 2 North First Street, Richmond, Virginia 23219, Counsel for the Petitioner.

Linwood T. Wells, Jr.
Assistant Attorney General